



Missouri State High School Activities Association

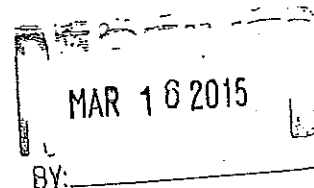
1 N. Keene Street, Columbia, MO 65201-6645 • P.O. Box 1328, Columbia, MO 65205-1328
Phone (573) 875-4880 • Fax (573) 875-1450 • www.mshsaa.org • email@mshsaa.org

Dr. Kerwin Urhahn, Executive Director

Harvey Richards, Associate Executive Director Stacy Schroeder, Associate Executive Director
Davine Davis, Assistant Executive Director Kevin Garner, Assistant Executive Director Craig Long, Chief Financial Officer
Greg Stahl, Assistant Executive Director Tim Thompson, Assistant Executive Director Jason West, Communications Director

March 13, 2015

Ms. Amanda D. Anthony, Staff Attorney
Missouri Protection & Advocacy Services
2000 Innerbelt Business Center Drive
Overland, MO 63114-5764



BY FAX (314-785-1707); HARD COPY TO FOLLOW

Re: [REDACTED] (Troy-Buchanan High School)

Dear Ms. Anthony:

I have been directed to respond to your recent letter dated February 27, 2015, on behalf of the Missouri State High School Activities Association Board of Directors.

The Missouri State High School Activities Association (hereinafter the "MSHSAA" or "Association") is a voluntary unincorporated association of Missouri public and non-public schools. The Association is governed by a Constitution and By-Laws, which are included in the Association's 86th Annual Official Handbook, which is available on the MSHSAA public website: www.mshsaa.org. As a voluntary association of public and non-public schools, the MSHSAA adopts standards for the regulation and supervision of only those interscholastic activities and contests which are "delegated by the member schools to the jurisdiction of the Association" (Constitution, Article II, Section 2, page 16).

The MSHSAA has a long and successful record of considering and acting on individual requests for "reasonable modifications" for disabled students seeking participation in existing activities and athletic events provided by the MSHSAA member schools. On December 16, 2013, the United States Department of Education Office for Civil Rights in Washington, DC issued clarifying guidance to the National School Boards Association on Section 504 of the Rehabilitation Act of 1973 and related regulations. This guidance clarified that "equal access" to existing extracurricular athletic activities under the law "does not mean . . . that school districts must create separate or different activities just for students with disabilities." Moreover, while this guidance urged school districts to create "additional opportunities for such students, including separate or different activities from those already provided," the DOE/OCR expressed its view that a school district is not "required to do so" under the law.

Thereafter, and notwithstanding the above, MSHSAA launched an initiative in 2014 to create new Track and Field opportunities for disabled students attending member schools in response to a request by Troy Buchanan High School. Under this plan, we will closely monitor the number of participants and the number of schools involved with three new adaptive events during the regular season for Track and Field including the 100m dash, 400m dash and shot put for a two-year trial period while we consider the feasibility and procedural modifications for conducting a State Championship Series for these and/or other adaptive events for Track and Field in the future. This process began with a unanimous recommendation of the MSHSAA Track and Field Advisory Committee to the Board of Directors on June 10, 2014, which was subsequently accepted and approved by the Board. On December 3, 2014, the Board of Directors approved this same topic for discussion with member schools during the Annual Area Meetings in our eight geographical board districts during January 2015. Following these Area Meetings, the Board of Directors approved our annual membership Questionnaire to identify the number of students

"The MSHSAA promotes the value of participation, sportsmanship, team play and personal excellence to develop students who make positive contributions to their community and support the democratic principles of our state and nation."

EXHIBIT

2

Ms. Anthony
Page 2
March 13, 2015

and schools who may be interested in adaptive events. We will be sharing the results of this Questionnaire with our member schools including the administration of your client's school.

In order to establish a credible and fair statewide championship series for adaptive sports, there are numerous and complex issues to discuss, process and new procedures to implement with our member schools across the State of Missouri. The orderly process we have commenced for new adaptive events for Track and Field is similar to the same process followed in the past for adding girls' pole vault and the identical process we are currently in to also consider new competition for the javelin. This process is also similar to the Procedures for Emerging and Provisional Interscholastic Activities to attain full status as an MSHSAA Interscholastic Activity under By-Law 5.2.1.c. with full services (including a State Series); ie., "Registration of 50 or more schools representing at least 3 Board Districts for a **second** consecutive year and upon passage of the necessary By-Laws to fully integrate the activity into the interscholastic offerings by the membership." Application of such neutral practices, policies and procedures for adding events for the disabled and able bodied alike is not discriminatory.

While MSHSAA will be closely monitoring three new wheelchair events, we want to make it clear to you and your client that our member schools are free to add other adaptive events to their regular season competitions this Spring such as the 200m dash and other events referenced in your letter. MSHSAA does not mandate to member schools which sports or athletic events they must provide for their students. That is a local school decision. Moreover, how these events are scored is up to the host school during the evaluation period. All of this has been communicated to our member schools and coaches with links to resources which may assist them with equipment and meet management.

Courts have recognized that there are inherent and relevant differences that make wheeling a separate and distinct discipline which education officials are entitled to consider in designing and operating fair and equitable competition.

There are many models for conducting and scoring Track and Field meets involving para athletes which will ultimately be considered by MSHSAA, but to demand that the statewide membership of this Association adopt rules described in Exhibit B attached to your letter by noon today would constitute such a fundamental alteration in the nature of our program and impose such as undue financial and administrative burden to make, by definition, your extensive requests for modifications "not reasonable." In deciding what is reasonable in the context of a high school athletic program, considering both competitive and safety concerns is appropriate, Pottgen v. Missouri State High School Activities Association, 40 F.3d 926, 929 (8th Cir. 1994).

██████████ and her father have had an important role in this discourse with our Association, and it would be our hope that during this critical time period when we are actively encouraging and promoting our member schools to make adaptive sports available for students, that it would be the decision of your client to refrain from filing a federal lawsuit against the Association of those same schools. Instead, it is the hope of our Board of Directors that all parties concerned would continue devoting their efforts in a more cooperative manner to achieve our mutual goals.

At its recent meeting this week, the MSHSAA Board of Directors directed the staff to continue in the current direction to introduce adaptive Track and Field events to member schools of the Association consistent with established past practices for adding events to the Track and Field State Series. The Board adopted a further resolution inviting Troy-Buchanan High School and other interested parties to present additional public comment on this subject at the next scheduled Board of Directors Meeting to be held April 10-11, 2015. If your clients would like to be heard further on this matter, please advise.

Respectfully,



Dr. Kerwin Urhahn
MSHSAA Executive Director

KU:kl